

HOUSE BILL No. 1230

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5-1-102; IC 28-1-11-3.2; IC 28-7-1; IC 28-8-4; IC 28-10-1-1; IC 28-11-3-6; IC 28-13; IC 28-15-2-2.

Synopsis: Financial institutions matters. Updates references in financial institutions law to conform with federal law. Permits a state chartered financial institution to engage in activities related to a product, a service, or an investment that is available to or offered by national banks domiciled in Indiana. Removes limitations on the amount of public funds that may be deposited in a credit union. (Currently, deposits of public funds are limited to 10% of total credit union assets.) Increases the minimum amount of the bond required for a money transmitter from \$100,000 to \$200,000 and the maximum amount from \$200,000 to \$300,000. Increases the insurance coverage required for a money transmitter for criminal or dishonest acts from 50% to 100% of the amount of the money transmitter's security bond or deposit. Provides that state law applies to a state chartered bank, trust company, savings association, savings bank, credit union, corporate fiduciary, or industrial loan and investment company to the same extent it applies to a federally chartered institution of the same type. Establishes administrative procedures governing requests for an exemption from state law due to the preemption of state law as it is applied to federally chartered institutions. Authorizes the director of the department of financial institutions to appoint a person to fill a vacancy on the board of directors of a financial institution under certain circumstances.

Effective: January 1, 2004 (retroactive); July 1, 2004.

Bardon

January 20, 2004, read first time and referred to Committee on Financial Institutions.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1230

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-4.5-1-102, AS AMENDED BY P.L.258-2003,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 102. Purposes; Rules of
4 Construction—(1) This article shall be liberally construed and applied
5 to promote its underlying purposes and policies.
6 (2) The underlying purposes and policies of this article are:
7 (a) to simplify, clarify, and modernize the law governing retail
8 installment sales, consumer credit, small loans, and usury;
9 (b) to provide rate ceilings to assure an adequate supply of credit
10 to consumers;
11 (c) to further consumer understanding of the terms of credit
12 transactions and to foster competition among suppliers of
13 consumer credit so that consumers may obtain credit at
14 reasonable cost;
15 (d) to protect consumer buyers, lessees, and borrowers against
16 unfair practices by some suppliers of consumer credit, having due

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regard for the interests of legitimate and scrupulous creditors;
 (e) to permit and encourage the development of fair and economically sound consumer credit practices;
 (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and
 (g) to make uniform the law including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted pursuant to this article.

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2002~~ 2003.

SECTION 2. IC 28-1-11-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.2. (a) As used in this section, "rights and privileges" means the power to:

- (1) create;
- (2) deliver;
- (3) acquire; ~~or~~
- (4) sell; **or**

(5) engage in activities related to;

a product, a service, or an investment that is available to or offered by national banks domiciled in Indiana.

(b) A bank that intends to exercise any rights and privileges that are:

- (1) granted to national banks; but
- (2) not authorized for banks under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to national banks that the bank intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the bank.

(c) The department shall promptly notify the requesting bank of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the bank may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department, through its members, may prohibit the bank from exercising the requested rights and privileges only if the members find that:

- (1) national banks domiciled in Indiana do not possess the requested rights and privileges; or
- (2) the exercise of the requested rights and privileges by the bank

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would adversely affect the safety and soundness of the bank.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the bank's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the bank may exercise the requested rights and privileges only if the bank receives prior written approval from the department. However:

(1) the members must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the bank's letter; and

(2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a bank in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) Whenever, in compliance with this section, a bank exercises rights and privileges granted to national banks domiciled in Indiana, all banks may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all banks would not adversely affect their safety and soundness.

(h) If the department denies the request of a bank under this section to exercise any rights and privileges that are granted to national banks, the bank may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the bank is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 3. IC 28-7-1-9, AS AMENDED BY P.L.258-2003, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to members or other credit unions. A loan to another credit union may not exceed twenty percent (20%) of the paid-in capital and surplus of the credit union making the loan.

(3) To make loans to officers, directors, or committee members, but only if:

(A) the loan complies with all requirements under this chapter

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with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(B) upon the making of the loan, the aggregate amount of loans outstanding under this subdivision will not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union;

(C) the loan is approved by the credit committee or loan officer; and

(D) the borrower takes no part in the consideration of or vote on the application.

(4) To invest in any of the following:

(A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

(C) Interest-bearing obligations of the FSLIC Resolution Fund and obligations of national mortgage associations issued under the authority of the National Housing Act.

(D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).

(E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(F) In savings and loan associations, other credit unions that are insured under IC 28-7-1-31.5 and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company; nor more than forty percent (40%) in all such associations and companies.

(G) Corporate credit unions.

(H) Federal funds or similar types of daily funds transactions with other financial institutions.

(I) Mutual funds created and controlled by credit unions, credit union associations, or their subsidiaries. Mutual funds referred to in this clause may invest only in instruments that are

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approved for credit union purchase under this chapter.

(J) Shares, stocks, or obligations of any credit union service organization (as defined in Section 712 of the Rules and Regulations of the National Credit Union Administration) with the approval of the department. Not more than five percent (5%) of the total paid in and unimpaired capital of the credit union may be invested under this clause.

(5) To deposit its funds into:

(A) depository institutions that are federally insured; or

(B) state chartered credit unions that are privately insured by an insurer approved by the department.

(6) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.

(7) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.

(8) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.

(9) To charge the member's share account for the actual cost of necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.

(10) To transfer to an accounts payable, a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of two (2) years. The credit union shall not consider the payment of dividends on the transferred account.

(11) To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its assets is subject to the approval of the department.

(12) To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the

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principal office.

(13) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

(14) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.

(15) To sell and cash negotiable checks, travelers checks, and money orders for members.

(16) To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of its unimpaired capital and surplus unless special written authorization has been granted by the department.

(17) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(18) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan which qualifies or qualified for specific tax treatment under Section 408(a) or Section 401(d) of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.

(19) To issue shares of its capital stock or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.

(20) A credit union may exercise any rights and privileges that are:

(A) granted to federal credit unions; but

(B) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

if the credit union complies with section 9.2 of this chapter.

(21) To sell, pledge, or discount any of its assets. However, a

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credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.

(22) To purchase assets of another credit union and to assume the liabilities of the selling credit union.

(23) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. ~~However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed ten percent (10%) of the total assets of that credit union, excluding those public funds.~~

(24) To join the National Credit Union Administration Central Liquidity Facility.

(25) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(26) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

(27) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by

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agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

(28) Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional obligations as may be incident to becoming an owner or lessor of such property.

(29) Subject to any restrictions that the department may impose, to engage in other activities related to the powers granted by this section.

SECTION 4. IC 28-7-1-9.2, AS ADDED BY P.L.134-2001, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9.2. (a) As used in this section, "rights and privileges" means the power to:

(1) create;

(2) deliver;

(3) acquire; or

(4) sell; or

(5) engage in activities related to;

a product, a service, or an investment that is available to or offered by federal credit unions domiciled in Indiana.

(b) A credit union that intends to exercise any rights and privileges that are:

(1) granted to federal credit unions; but

(2) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to federal credit unions that the credit union intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the credit union.

(c) The department shall promptly notify the requesting credit union of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the credit union may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department, through its members, may prohibit the credit

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union from exercising the requested rights and privileges only if the members find that:

- (1) federal credit unions domiciled in Indiana do not possess the requested rights and privileges; or
- (2) the exercise of the requested rights and privileges by the credit union would adversely affect the safety and soundness of the credit union.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the credit union's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the credit union may exercise the requested rights and privileges only if the credit union receives prior written approval from the department. However:

- (1) the members must:
 - (A) approve or deny the requested rights and privileges; or
 - (B) convene a hearing;
 - not later than sixty (60) days after the department receives the credit union's letter; and
- (2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a credit union in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) Whenever, in compliance with this section, a credit union exercises rights and privileges granted to federal credit unions domiciled in Indiana, all credit unions may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all credit unions would not adversely affect their safety and soundness.

(h) If the department denies the request of a credit union under this section to exercise any rights and privileges that are granted to federal credit unions, the credit union may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the credit union is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 5. IC 28-8-4-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. (a) Except as provided in section 29 of this chapter, an application must be accompanied by a security device that secures the faithful performance

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of the obligations of the licensee to receive, handle, transmit, and pay money in connection with the:

- (1) sale and issuance of payment instruments; or
- (2) transmission of money.

(b) The security device required under subsection (a) must:

- (1) be in an amount as provided under subsection (c);
- (2) run to the state; and
- (3) be in a form acceptable to the director.

(c) The security device must be in an amount calculated as follows:

STEP ONE: Subtract one (1) from the number of locations where the applicant proposes to engage in business under the license.

STEP TWO: Multiply the difference determined under STEP ONE by ten thousand dollars (\$10,000).

STEP THREE: Add ~~one~~ **two** hundred thousand dollars ~~(\$100,000)~~ **(\$200,000)** to the product determined under STEP TWO.

STEP FOUR: Pay the amount that is the lesser of:

- (1) the sum determined in STEP THREE; or
- (2) ~~two~~ **three** hundred thousand dollars ~~(\$200,000)~~ **(\$300,000)**.

(d) If the security device filed is a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond.

SECTION 6. IC 28-8-4-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) A license granted under this chapter permits a licensee to conduct business:

- (1) at one (1) or more locations directly or indirectly owned by the licensee; or
- (2) through one (1) or more authorized delegates.

(b) Each licensee shall maintain a policy of insurance issued by an insurer authorized to do business in Indiana that insures the applicant against loss by a criminal act or act of dishonesty. The principal sum of the policy shall be equivalent to ~~one-half (1/2)~~ **one hundred percent (100%)** of the required security device required under section 27 of this chapter or deposit required under section 29 of this chapter.

(c) Except as provided in subsection (d), a licensee must at all times possess permissible investments with an aggregate market value calculated in accordance with generally accepted accounting principles of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee or an authorized delegate of the licensee in the United States.

(d) The director may waive the permissible investments requirement in subsection (c) if the dollar volume of a licensee's outstanding payment instruments does not exceed:

- (1) the security device posted by the licensee under section 27 of

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1 this chapter; or

2 (2) the deposit made by the licensee under section 29 of this
3 chapter.

4 (e) A licensee that is a corporation must at all times be in good
5 standing with the secretary of state of the state in which the licensee
6 was incorporated.

7 SECTION 7. IC 28-10-1-1, AS AMENDED BY P.L.258-2003,
8 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1. A reference to a
10 federal law or federal regulation in IC 28 is a reference to the law or
11 regulation in effect January 1, ~~2003~~ 2004.

12 SECTION 8. IC 28-11-3-6 IS ADDED TO THE INDIANA CODE
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2004]: Sec. 6. (a) As used in this section:

15 (1) "federally chartered" means an entity organized or
16 reorganized under the law of the United States; and

17 (2) "state chartered" means an entity organized or
18 reorganized under the law of Indiana or another state.

19 (b) If the department determines that federal law has preempted
20 a provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the provision of
21 IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state chartered
22 entity only to the same extent that the department determines the
23 provision is applicable to the:

24 (1) same; or

25 (2) functionally equivalent;
26 type of federally chartered entity.

27 (c) A state chartered entity seeking an exemption from a
28 provision of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the
29 preemption of the provision as applied to a federally chartered
30 entity shall submit a letter to the department:

31 (1) describing in detail; and

32 (2) documenting the federal preemption of;
33 the provisions from which it seeks exemption. If available, copies
34 of relevant federal law, regulations, and interpretive letters must
35 be attached to the letter submitted by the requesting entity.

36 (d) The department shall notify the requesting entity within ten
37 (10) business days after the department's receipt of a letter
38 described in subsection (c). Except as provided in subsection (e),
39 upon receipt of the notification, the requesting entity may operate
40 as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29,
41 or IC 30 for a period of not more than ninety (90) days after the
42 date on which the department receives the letter, unless otherwise

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1 notified by the department. This period may be extended if the
 2 department determines that the requesting entity's letter raises
 3 issues requiring additional information or additional time for
 4 analysis. If the department extends the period, the requesting
 5 entity may operate as if the requesting entity is exempt from a
 6 provision of IC 24, IC 26, IC 28, IC 29, or IC 30 only if the
 7 requesting entity receives prior written approval from the
 8 department. However:

9 (1) the department must:

10 (A) approve or deny the requested exemption; or

11 (B) convene a hearing;

12 not later than ninety (90) days after the department receives
 13 the requesting entity's letter; and

14 (2) if a hearing is convened, the department must approve or
 15 deny the requested exemption not later than ninety (90) days
 16 after the hearing is concluded.

17 (e) The department may refuse to exempt a requesting entity
 18 from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the
 19 department finds that any of the following conditions apply:

20 (1) The department determines that a described provision of
 21 IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a
 22 federally chartered entity of the:

23 (A) same; or

24 (B) functionally equivalent;

25 type.

26 (2) The extension of the federal preemption in the form of an
 27 exemption from a provisions of IC 24, IC 26, IC 28, IC 29, or
 28 IC 30 to the requesting entity would:

29 (A) adversely affect the safety and soundness of the
 30 requesting entity; or

31 (B) result in an unacceptable curtailment of consumer
 32 protection provisions.

33 (3) The failure of the department to provide for the exemption
 34 from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will
 35 not result in a competitive disadvantage to the requesting
 36 entity.

37 (f) The operation of a financial institution in a manner
 38 consistent with exemption from a provision of IC 24, IC 26, IC 28,
 39 IC 29, or IC 30 under this section is not a violation of any provision
 40 of the Indiana Code or rules adopted under IC 4-22-2.

41 (g) If a financial institution is exempted from the provisions of
 42 IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this section,

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all financial institutions determined by the department as having the same or a functionally equivalent charter may also be exempted, if the department determines by an order published in the Indiana Register that the exemption will not:

(1) adversely affect the safety and soundness of the financial institutions; or

(2) unduly constrain Indiana consumer protection provisions.

(h) If the department denies the request of a financial institution under this section for exemption from Indiana Code provisions that are preempted for federally chartered institutions, the requesting institution may appeal the decision of the department to the circuit court of the county in which the principal office of the requesting institution is located.

SECTION 9. IC 28-13-16-4, AS AMENDED BY P.L.258-2003, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) A financial institution or any of its subsidiaries may acquire or establish a qualifying subsidiary by providing the department with written notice before acquiring or establishing the subsidiary. The department shall notify the requesting financial institution of the department's receipt of the notice.

(b) A subsidiary may exercise a power or engage in an activity permitted to be performed by a financial institution under the same conditions and restrictions as if the power or activity is performed by the financial institution itself, or the activity has been authorized by as an "activity eligible for notice" procedure under 12 CFR 5.34(c)(2)(ii). 5.34(e).

(c) The qualified subsidiary may exercise or engage in the activity thirty (30) days after the date on which the department receives the notification unless otherwise notified by the department.

SECTION 10. IC 28-13-16-5, AS ADDED BY P.L.215-1999, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. A financial institution may acquire or establish a nonqualifying subsidiary by submitting an application to the department containing:

(1) a complete description of the financial institution's investment in the subsidiary;

(2) the activity to be conducted; and

(3) a representation that the activity:

(A) could be performed by a financial institution under statutory authority of this title;

(B) is a part of or incidental to the business of banking as determined by the director; or

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(C) has been authorized ~~by as an "activity eligible for notice" procedure under 12 CFR 5.34(c)(2)(ii): 5.34(e).~~

The department shall notify the requesting financial institution of the department's receipt of the application.

SECTION 11. IC 28-13-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the board of directors may fill the vacancy; or

(2) if the directors remaining in office constitute fewer than a quorum of the board, the directors may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 7(b) of this chapter or otherwise may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

(d) If:

(1) a vacancy occurs on a board of directors; and

(2) the vacancy is not filled by a competent replacement through the institution's normal election process within a period considered reasonable by the department of the financial institutions;

the director of the department may appoint to the board of directors a person whom the director considers capable of providing competent leadership and decision making ability.

(e) A person appointed under subsection (d):

(1) may serve until the director determines that the institution has filled the vacancy through the institution's normal election process; and

(2) may not serve on a board of directors for a period of more than two (2) years, unless elected through the institution's normal election process.

SECTION 12. IC 28-15-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) As used in this section, "rights and privileges" means the power to:

(1) create;

(2) deliver;

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(3) acquire; or

(4) sell; or

(5) engage in activities related to:

a product or service that is available to or offered by federal savings associations.

(b) Subject to this section, savings associations may exercise the rights and privileges that are granted to federal savings associations.

(c) A savings association that intends to exercise any rights and privileges that are:

(1) granted to federal savings associations; but

(2) not authorized for savings associations under:

(A) the Indiana Code (except for this section); or

(B) a rule adopted under IC 4-22-2;

shall submit a letter to the department, describing in detail the requested rights and privileges granted to federal savings associations that the savings association intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter.

(d) The department shall promptly notify the requesting savings association of its receipt of the letter submitted under subsection (c). Except as provided in subsection (f), the savings association may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(e) The department, through its members, may prohibit the savings association from exercising the requested rights and privileges only if the members find that:

(1) federal savings associations in Indiana do not possess the requested rights and privileges; or

(2) the exercise of the requested rights and privileges by the savings association would adversely affect the safety and soundness of the savings association.

(f) The sixty (60) day period referred to in subsection (d) may be extended by the department based on a determination that the savings association letter raises issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the savings association may exercise the requested rights and privileges only if the savings association receives prior written approval from the department. However:

(1) the members must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

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1 not later than sixty (60) days after the department receives the
2 savings association's letter; and

3 (2) if a hearing is convened, the members must approve or deny
4 the requested rights and privileges not later than sixty (60) days
5 after the hearing is concluded.

6 (g) The exercise of rights and privileges by a savings association in
7 compliance with and in the manner authorized by this section does not
8 constitute a violation of any provision of the Indiana Code or rules
9 adopted under IC 4-22-2.

10 (h) Whenever, in compliance with this section, a savings association
11 exercises rights and privileges granted to national savings associations
12 domiciled in Indiana, all savings associations may exercise the same
13 rights and privileges if the department by order determines that the
14 exercise of the rights and privileges by all savings associations would
15 not adversely affect their safety and soundness.

16 SECTION 13. **An emergency is declared for this act.**

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